

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 USIE-00 SSO-00 INRE-00 AID-05
CEA-01 CIAE-00 COME-00 EB-08 EA-07 FRB-03 INR-07
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O R 241158Z MAR 77
FM USMISSION OECD PARIS
TO SECSTATE WASH DC IMMEDIATE 5830
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 02 OECD PARIS 08636

PASS EB FOR BOEKER AND SMITH; TREASURY FOR GRIFFIN

E.O. 11652: GDS
TAGS: EINV, OECD
S/SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME), NEXT MEETING MARCH 31-
APRIL 1; PREPARATION FOR BADGER BELGIUM CASE

REF: (A) OECD PARIS 8601, (B) OECD PARIS 8425

1. MISSION OFFICERS MET WITH CIME CHAIRMAN (ABRAMOWSKI)
ON MARCH 23 TO REVIEW BELGIAN DOCUMENTATION (REFTEL B)
FOR PROPOSED NEW AGENDA ITEM FOR CIME REFERRING TO
BADGER BELGIUM CASE, AND TO DISCUSS VARIOUS MODALITIES
FOR HANDLING THIS MATTER IN CIME PLENARY ON MARCH 31-
APRIL 1.

2. MISSION OFFICERS' UNDERSTANDING OF ABRAMOWSKI'S
THINKING (WHICH HE EMPHASIZED WAS PERSONAL AND VERY
PRELIMINARY IN NATURE) IS THAT (A) HE IS OPPOSED TO
BELGIAN REQUEST (PARA 9, REFTEL B) FOR BADGER/RAYTHEON
REPRESENTATION AT CIME AND (B) HE IS NEARLY AS FIRMLY
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OOPOSED TO BELGIAN SUGGESTION FOR A CIME REPORT (WITH
POSSIBLE CONCLUSIONS) ON THIS MATTER FOR OECD COUNCIL.

3. IT IS ABRAMOWSKI'S VIEW THAT CIME SHOULD AGREE TO
BELGIAN REQUEST (PARA 4, REFTEL B) FOR A "CONSTRUCTIVE
EXCHANGE OF VIEWS" ON GENERAL INTERPRETATION OF THE
PORTIONS OF THE OECD GUIDELINES CITED BY GOB. GENERAL

RULES FOR DISCUSSION WOULD INCLUDE A CLEAR DISCLAIMER THAT CIME WAS NOT SITTING IN JUDGMENT (AS A TRIBUNAL) ON THIS MATTER AND THAT IN ACCORDANCE WITH PROHIBITION APPLYING TO CIME (AS STATED PARA 3 OF CONSULTATION PROCEDURES ASSOCIATED WITH THE GUIDELINES) NO CONCLUSION ON ANY SPECIFIC CASE WOULD BE REACHED. EVERY EFFORT WOULD BE MADE NOT TO PREJUDICE ANY ONGOING OR POSSIBLE FUTURE ADJUDICATIONS IN THE BELGIAN (OR ANY OTHER) LEGAL SYSTEM.

4. ACCORDING TO ABRAMOWSKI'S SUGGESTION, DISCUSSION COULD CENTER ON HOW GUIDELINES (THOSE SECTIONS CITED BY GOB) COULD APPLY (IN AN UN-NAMED CASE) IN A SITUATION CENTRAL CHARACTERISTICS OF WHICH CONSISTED OF WHOLLY-OWNED SUBSIDIARY OF AN MNE WHICH, WHEN LIQUIDATED, HAS ASSETS INSUFFICIENT TO MEET ALL BACK AND SEVERANCE PAY CLAIMS BY ITS FORMER EMPLOYEES, AND WHETHER THE HOME OFFICE OF THE MNE HAS A "MORAL OBLIGATION" TO "MITIGATE TO THE MAXIMUM EXTENT POSSIBLE ADVERSE EFFECTS" OF SUCH A LIQUIDATION. THERE WOULD BE NO DISCUSSION OF THE SPECIFIC CASE. ABRAMOWSKI POINTED OUT THAT IF BADGER WERE MENTIONED EVEN ILLUSTRATIVELY IN THE DISCUSSION, THE ARGUMENTS FOR VETOING THEIR PRESENCE AT A LATER DATE AT CIME WOULD BE WEAKENED (I.E. IT COULD BE ARGUED THAT ALLEGATIONS ALREADY MENTIONED WOULD NEED TO BE CLARIFIED BY ALL PARTIES INCLUDING THE ENTERPRISE.)

5. FURTHER, IT IS ABRAMOWSKI'S VIEW THAT THE AIM OF CIME DISCUSSION SHOULD BE TO PRODUCE A WRITTEN STATEMENT CONFIDENTIAL

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OR SUMMARY (FOR CIME RECORDS AND/OR FOR EVENTUAL USE BY DELS AND BY OECD SECRETARIAT FOR THE PRESS). ABRAMOWSKI RECOGNIZED THAT CONTENT OF SUCH A NOTE WOULD HAVE TO BE CAREFULLY CONSIDERED AND WOULD PARTLY DEPEND ON NATURE OF ACTUAL DISCUSSION. HIS INITIAL IDEA WHICH HE ASKED US TO PASS ON IS THAT NOTE MIGHT INCLUDE FOLLOWING ELEMENTS: (A) THAT CIME HAD DISCUSSED INTERPRETATION OF OECD GUIDELINES WITH RESPECT TO A GENERAL SITUATION (AS DESCRIBED PARA 4 ABOVE), (B) THAT VARYING VIEWS HAD BEEN EXPRESSED (AND DESCRIBE THOSE VIEWS) AND (C) THAT CIME TOOK NOTE OF THE DISCUSSION AND WOULD BEAR IT IN MIND FOR FURTHER REFERENCE, BOTH WITH RESPECT TO PERIODIC REPORTS TO THE OECD COUNCIL ON EXPERIENCE RELATED TO THE GUIDELINES, AND TO THE GENERAL REVIEW OF THE OECD INVESTMENT PACKAGE TO OCCUR WITHIN A THREE-YEAR PERIOD.

6. ABRAMOWSKI SAID HE IS FULLY COGNIZANT OF THE DANGERS

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C O N F I D E N T I A L SECTION 02 OF 02 OECD PARIS 08636

AND SENSITIVITIES INVOLVED IN BELGIAN DEMARCHE. ON THE ONE HAND, IF DISCUSSION IN CIME GAVE THE APPEARANCE OF A TRIBUNAL SITTING IN JUDGMENT, REACTION OF BIAC AND REST OF BUSINESS COMMUNITY WOULD BE THAT, CONTRARY TO GOVERNMENT DISCLAIMERS DURING THE NEGOTIATION PROCESS, THE GUIDELINES WERE BEING ACTIVELY USED AND ENFORCED AGAINST SPECIFIC COMPANIES. ON THE OTHER HAND, IF CIME COMPLETELY STONEWALLS BELGIAN INITIATIVE OR PUTS CONSIDERATION OFF TO A LATE DATE, THEN THE GUIDELINES WOULD RISK APPEARING TO BE A "PAPER TIGER" WITH NO MEANING AND WITH IMPLICATION OF A LACK OF GOOD FAITH BY GOVERNMENTS IN THEIR CREATION. IT WOULD ALSO HAVE AN ADVERSE IMPACT ON CODE-DRAFTING EXERCISE GOING ON IN UN, WHERE ARGUMENTS OF THOSE WHO SEEK TO PUT MORE "BITE" IN A CODE OF CONDUCT WOULD BE WELL-SERVED BY AN IMPASSE IN OECD.

7. COMMENT: MISSION AGREES WITH ABRAMOWSKI'S ASSESSMENT (PARA 6) OF DELICACY OF TRADE-OFFS IN RESPONSE THAT CIME WILL GIVE TO GOB INITIATIVE. WE BELIEVE THAT ABRAMOWSKI'S SUGGESTION FOR HANDLING IT HAS MERIT AND
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SHOULD BE CAREFULLY CONSIDERED, ALTHOUGH WE MAY OBVIOUSLY HAVE DIFFERING VIEWS ON NATURE AND PRESENTATION OF SUMMARY OF DISCUSSION. MISSION RECOMMENDS THAT IF POSSIBLE REACTIONS BE PASSED BOTH TO MISSION AND TO AMEMBASSY BONN FOR ABRAMOWSKI PRIOR TO ARRIVAL OF US CIME DELEGATION.

8. GIVEN IMPORTANCE AND SENSITIVITY OF THIS QUESTION, AMBASSADOR WILL TELEPHONE BOEKER ON MARCH 24 OR MARCH 25.
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